

New York News Service 9/7/78 Reporter Subpena for Leaked Memo Catches Bell Off Guard

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WASHINGTON — Atty. Gen. Griffin Bell expressed surprise yesterday when asked why he had approved a subpoena of a Pittsburgh Post-Gazette reporter in connection with a leaked Justice Department memorandum.

"I've done that?" Bell said at a news conference before aides called him aside for a quick briefing. "I don't know. I sign these subpoenas sometimes . . . did she agree to it?"

Bell's aides earlier had confirmed the Attorney General had approved the subpoena, after it had been reviewed by his staff and its scope limited to one reporter.

But the subpoena of reporter Joyce Gempertlein to appear before a grand jury later this month has caused the latest clash between the press and the legal system over the extent to which journalists can be compelled to reveal their sources of information.

The case, involving a leak from the U.S. attorney's office in Pittsburgh, has received national attention, with the National Reporters Committee for Freedom of the Press here and a number of other

press organizations trying to stop the subpoena.

The question arose when Bell said he would not use the legal process against an American citizen to compel the person to reveal the source of a Government document.

Referring to the conviction last February of David Truong, a Vietnamese anti-war activist prosecuted on charges of funneling classified State Department documents to the Hanoi government, Bell said:

"I don't want anyone to think that we would use that (criminal prosecution) against an American citizen who just got a leak out of the Justice Department. 'The only time it's ever been used, to the best of my knowledge, is on espionage cases.'"

Bell said the most the Justice Department would do in a leak case is have the Government lawyers under suspicion sign affidavits saying they had not leaked the documents.

Terrence B. Adamson, chief spokesman for the Justice Department, Tuesday said Bell had approved the subpoena served on Miss Gempertlein.

Aides at first reviewed and limited the scope of the subpoena under depart-

mental guidelines established in 1973 regulating the subpoenaing, interrogation, indictment and arrest of members of the news media.

Those guidelines stipulated that, before a reporter is forced to testify before a Federal grand jury, it must be determined the information sought can be obtained from no other source.

The guidelines also said all attempts should be made to negotiate a compromise with the news organization before the reporter is called before a grand jury.

The subpoena must be approved by the attorney general himself.

Adamson said journalists are subpoenaed to testify in Federal proceedings about once every five weeks. He said, however, that in "98 per cent" of the cases, the reporter is willing to cooperate with Federal investigators, but requests to be subpoenaed.

Adamson said Miss Gempertlein's case is only one of two cases since Bell took office in January 1977, where a reporter has been subpoenaed to appear before a grand jury involuntarily.

While Justice Department officials tried to treat the matter in a routine manner, they acknowledged that Miss Gempertlein may refuse to reveal the

source of the memo and face a possible jail sentence for contempt of court.

"Of course, we run that risk," a top Justice Department official said privately. "We'll have to wait and see on that."

Miss Gempertlein was subpoenaed last Aug. 15, in connection with a memorandum from assistant U.S. Attorney James E. Roark concerning the blackmail attempt against Allegheny County Commissioner Robert N. Peirce Jr.

In her story, the reporter revealed a recommendation in the memo to U.S. Attorney Blair Griffith that Peirce, Republican committeewoman Esie Hillman, former FBI agent John Portella and former Ross Township Police Chief Robert Butzler be indicted for allegedly destroying photos taken of Peirce and a woman who was blackmailed into having a rendezvous.

Allegheny County bail bondsman David Wander and Edward Reddington were convicted in the sex-blackmail case and no other indictments were handed down.

U.S. Attorney Blair Griffith said no new evidence was found to warrant further indictments, but he was furious the memo had been leaked